IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17307 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)
Versus
GUJARAT RAJYA KARMACHARI MAHAMANDAL - Respondent(s)

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Appearance :
MR YOGESH S LAKHANI for Petitioner(s) : 1,
MR MUKUL SINHA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 21/04/2006

ORAL JUDGMENT

Gujarat State Road Transport Corporation (“the Corporation” for brevity), through its Legal Advisor is before this Court challenging the order passed by the learned Industrial Tribunal, Ahmedabad in Reference (IT) No.123 of 2003, below Exh.8 dated 4th December 2003.

The facts giving rise to the present petition are necessary to appreciate the controversy involved in the matter. The same are as under.

The petitioner Corporation had issued GSO NO.1118 of 2003 and by that the special pay, which was paid by the Corporation, was withdrawn. This action of the petitioner-corporation was challenged by the respondent herein-Gujarat Rajya ST Karmachari Mandal, through its General Secretary by filing Special Civil Application No.5062 of 2003.

The papers of the said Special Civil application were called for perusal. In the said Special Civil Application it was prayed that,

> “10(a) Declaring that the action of respondent no.1-Corporation of stopping payment of 10% special pay and consequential allowances/ benefits, etc. by order dated 24th March 2003, at Annexure-I is in complete violation of the provisions of sections 9A, 25T and U and also section 29 of the ID Act, 1947 and also in violation of Articles 14,16, 19 and 21 of the

Constitution of India and directive principles of the Constitution, and therefore, the order is null, void and inoperative."

2. The said petition was disposed of by this Court (Coram: P.B. Majmudar, J.) on 10th October 2003. The order is reproduced for ready reference as under:

"By filing this petition the petitioner-union has challenged the order of respondent no.1-corporation dated 24/3/2003, stopping the payment of 10% special pay and consequential allowances/ benefits, on the ground that the same is in violation of the provisions of Industrial Disputes Act. By way of interim relief, it is prayed that till the petition is decided, the ST Corporation may be directed to continue the said benefit to the employees working at Depot, bus station, workshop and stores.

2.This Court, while admitting the matter has given interim relief, by which at present the concerned petitioners on behalf of whom this petition is filed, are given the benefit of

special pay. At the time of hearing of this matter, it was suggested on behalf of the petitioner-union that the petitioner-union is ready to make a representation and negotiate the matter with the Managing Director of the Corporation. Mr.Sinha, who is appearing for the petitioner-union stated that the petitioner-union would like to discuss the matter with their employer and the petitioner-union can suggest certain modification for the purpose of reviewing the decision, which is under challenge. Mr.Sinha, therefore, submitted that the petitioner-union be permitted to withdraw this petition in order to make appropriate representation as well as for negotiating the matter with the Managing Director.

3. Mr.Lakhani, who is appearing for the ST Corporation states that the corporation has no objection if the petitioner union is permitted to make a representation for the subject matter of the present petition. He submitted that if any representation is made by the petitioner union in this connection, the same will be decided and if any negotiation is

required the Managing Director shall also discuss the matter with the members of the petitioner union and the same should be treated as a hearing afforded to the petitioner union.

4. Considering the aforesaid aspect of the matter, the petitioner union is permitted to make a representation to the Managing Director of the corporation in connection with the subject matter. Mr.Sinha has submitted that a representation will be made within a period of one week from today. The Managing Director thereafter, may hear the petitioner union so that this issue can be decided finally at the corporation's end. After considering such representation and after hearing concerned union, it will be open for the Managing Director either to confirm the earlier decision or to modify the same or to rescind the same totally. This aspect is left to the wisdom and discretion of the Managing Director. The Managing Director is directed to take appropriate decision on the representation as indicated above as early as possible and preferably by 10th November 2003.

In case the petitioner has any grievance against the said decision of the Managing Director, it will be open for such union or even any individual employee to challenge the same in accordance with law before appropriate forum. Such decision be taken by 10th November 2003 and till that date the interim relief granted by this Court shall continue. It is clarified that this court has not expressed its opinion on the merits of the matter and it is for the Managing Director to take appropriate decision. It is clarified that even interim observations of this Court while admitting this petition shall not come in the way of the Managing Director and the Managing Director may take his own decision as he deem fit.

5. In view of the aforesaid order, Mr.Sinha wants to withdraw this petition. Permission is granted. This petition is disposed of as withdrawn. Rule is discharged. Interim relief granted earlier stands vacated subject to same being continued as directed earlier. In view of this order in Special Civil Application no order on Civil application."

3. The respondent union filed a representation and it was heard as contemplated under the under the order of this Court. Thereafter, the Managing Director of the petitioner corporation issued GSO No.1124 of 2003 on 10th November 2003, modifying earlier GSO No.1118 of 2003. It was decided to continue the benefits of 10% special pay qua certain class of employees only.

4. As was contemplated in the order of this Court dated 10th October 2003 that in the event the petitioner union has any grievance against the decision of the Managing Director, it will be open for the union or even any individual employee to challenge the same in accordance with law before appropriate forum. GSO No.1124 of 2003 is challenged in Reference No.179 of 2003. This reference was filed after serving the strike notice on 12th January 2003, which followed by conciliation proceedings between 15th to 19th November 2003 which resulted in failure giving rise to Reference No.179 of 2003.

5. Besides, the respondent-union also filed Reference (IT) No.123 of 2003 before the Industrial Tribunal, wherein along with other demands, demand of special pay

is also pressed. The respondent-union along with the Reference, has filed an application, Exh.8 for interim relief, and prayed to continue the payment of special pay which was paid earlier.

6. By Exh.10, list of documents in support of the Reference and also the interim application was filed. The petitioner corporation appeared and filed its reply vide Exh.12. The petitioner corporation raised all contentions after pointing out the relevant factual aspects, including the reason for which the special pay was withdrawn. The petitioner corporation filed documentary evidence vide Exh.14.

7. The learned Member of the Industrial, after hearing both the parties allowed the interim application and stayed the operation of GSO 1124 of 2003 dated 10th November 2003. The learned Member restrained the petitioner-corporation from withdrawing the duties entitling an employee for special pay. The learned Member of the Industrial Tribunal directed the petitioner corporation to continue to assign the duties to the relevant employees entitling them to special pay till final decision of the Reference.

It is this order which is under challenge in this Special Civil Application.

8. The learned senior counsel, Mr.Jhaveri appearing with Mr.Yogesh S. Lakhani, learned advocate appearing for the petitioner corporation submitted that besides on merits of the matter, by interim order no relief should have been granted which will amount to granting of final relief. The learned senior counsel also submitted that if the petitioner corporation pays special pay to its employees, it will not be possible for the corporation to recover the same in the event the reference fails. He submitted that on the other hand if the reference is allowed, the petitioner corporation can always be directed to pay special pay on such terms and conditions as may be deemed fit by the Hon'ble Industrial Tribunal. The learned senior counsel for the petitioner corporation relied upon a decision of the Hon'ble the Apex court in the matter of **Assistant Collector, Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Limited and others,** reported in A.I.R. 1985 SC 330. The learned senior counsel invited attention of the Court to the observations of the Hon'ble Supreme Court contained in para 1, which reads as under:

"1. It is indeed a great pity and, we wish we did not have to say it but we are afraid we will be signally failing in our duty if we do not do so some courts, of late, appear to have developed an unwarranted tendency to grant interim orders with a great potential for public mischief for the mere asking. We feel greatly disturbed. We find it more distressing that such interim orders, often ex parte and non-speaking are made even by the High Courts while entertaining writ petitions under Art.226 of the Constitution, and in the Calcutta High Court,on oral application too. .. ..

.. ..

this court was forced to point out how wrong it was to make interim orders so soon as an application was but presented, when a second though (or a second's thought) would expose the impairment of the public interest and often enough the existence of a suitable alternative remedy. Despite the fact that we have set out face against interfering with interim orders passed by the High Courts and made it practically a rigid rule not to so interfere, we were constrained to interfere in those case."

(emphasis supplied)

The learned senior counsel also invited attention of this Court to the observations of the Hon'ble the Apex Court in para 5, which read as under:

> “5. We repeat and deprecate the practice of granting interim order which practically give the **principal relief** sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other relevant considerations.
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> .. ..
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> We have come across cases where **the collection of public revenue** has been seriously jeopardised and budges of Governments, and Local Authorities affirmatively prejudiced to the point of precariousness consequent upon interim orders made by courts. In fact instances have come to our knowledge where Governments have been forced to explore further sources for raising revenue, sources which they would rather well leave alone in the public interest, because of the stays granted by courts. ..

.. ..

All this is not to say that Interim orders may never be made against public authorities. There are, of course, cases which demand that interim orders should be made in the interest of justice. Where gross violation of the law and injustices are perpetrated or are about to be perpetrated, it is the bounden duty of the court to intervene and give appropriate interim relief. In cases where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a citizen's faith in the impartiality of public administration, a Court may well be justified in granting Interim relief against public authority. But since the law presumes that public authorities function properly and bona fide with due regard to the public interest, a court must be circumspect in granting interim orders of far reaching dimensions or orders causing administrative, burdensome inconvenience or orders preventing collection of public revenue for no better reason than that the parties have come to the Court alleging prejudice, inconvenience or harm and that a prima facie case has been shown.

> There can be and there are no hard and fast rules. But prejudice, discretion and circumspection are called for. There are several other vital considerations apart form the existence of a prima facie case. There is the question of balance of convenience. There is the question of irreparable injury. There is the question of the public interest. There are many such factors worthy of consideration. We often wonder why in the case (of) indirect taxation where the burden has already been passed on to the consumer, any Interim relief should at all be given to the manufacturer, dealer and the like." (emphasis supplied)

9. The learned senior counsel Mr.Jhaveri vehemently submitted that the decision of the Hon'ble the Apex Court is squarely applicable to the facts of the case on hand. He submitted that earlier the respondent-union had come to this Court but then that petition was withdrawn with a view to approach the authority-Managing Director of the Corporation by way of a representation. He submitted that the representation made was considered after giving hearing to the Union, earlier GSO No.1118 of 2003 was

suitably modified by GSO No.1124 of 2003. The learned senior counsel submitted that by the later GSO, the management decided to continue the benefit of 10% special pay to certain class of employees. He submitted that this shows the conscious application of mind to the grounds made out by the respondent union. That being so, the learned Member of the Industrial Tribunal should have restrained himself from granting interim relief which in substance amounts to grant of final relief even before the adjudication of the dispute. He submitted that the learned Industrial Tribunal should have put the petitioner corporation to terms in view of the fact that once the amount is paid to the employees it will be next to impossible to recover the same even if the reference fails. As against that the petitioner corporation can always be directed, at the time of finally allowing the reference to pay the monetary benefits on suitable terms and conditions.

10. The learned senior counsel Mr.Jhaveri for the petitioner corporation next relied upon a decision of the Division Bench of this Court in the matter of **Abhuji Karshaji Thakore Vs. Thakore Jitaben Manchaji,** in Letters Patent Appeal No.179 of 2003 in Special Civil Application No.516 of 2003 reported in 2003 (2) GLJ (UJ)

3. The learned senior counsel submitted that the Division Bench has held that,

> “Interim relief which tantamounts to allowing the petition at the initial stage should not be granted.”

11. The learned senior counsel submitted that besides the respondent union could not have raised this dispute (about special pay) in Reference No.123 of 2003 as a substantive reference being Reference No.179 of 2003 is already filed. The learned senior counsel also submitted that the learned Member of the Industrial Tribunal has not taken into consideration the observations made by this Court while passing interim order in Special Case No.5062 of 2003, though it was specifically mentioned in order dated 10th October 2003 that,

> “It is clarified that this Court has not expressed its opinion on the merits of the matter and it is for the Managing Director to take appropriate decision. It is clarified that even interim observations of this Court while admitting shall not come in the way of the Managing Director and the Managing Director may

take his own decision as he deemed fit."

The learned senior counsel submitted that the learned Member of the Industrial Tribunal misguided himself and passed the order under challenge.

12. The learned senior counsel appearing for the petitioner corporation submitted that the learned Member of the Industrial Tribunal ought to have taken into consideration the service regulation clauses no.53, 54 and 56 and if the learned Member had taken into consideration the same, the learned Member would not have allowed the application by granting the relief as prayed for. The learned senior counsel also submitted that the learned Member of the Industrial Tribunal has committed grave error in not taking into consideration the economical and financial conditions of the corporation, which are going to be adversely affected by the order passed. He submitted that the learned Member of the Industrial Tribunal could not have lost sight of the fact that by GSO No.1124 of 2003 earlier GSO No.1118 of 2003 was modified. The learned senior counsel emphatically submitted that the most important aspect of the matter is that by the order under challenge the reference stands allowed at the admission stage itself. He submitted that

therefore, as per the law declared by the Hon'ble the Apex Court the petition is required to be allowed and the order is required to be quashed.

13. As against this, the learned advocate, Dr.Mukul Sinha appearing for the respondent-Mahamandal submitted that this is a petition filed against the interim order and therefore, the same should not be entertained. He submitted that the reference is yet to be heard and decided and the grievances which are made before this Court can always be made before the Industrial Tribunal at the time of passing of final verdict and they will be taken care of. The learned advocate for the respondent-Mahamandal invited attention of the Court to the affidavit in reply filed by one, Hasubhai B. Salvi, General Secretary of the respondent union dated 16th December 2003. Along with which he has produced necessary documents-settlement entered into between the petitioner corporation and the unions including the Mahamandal from time to time. The learned advocate for the respondent Mahamandal submitted that the decision of the petitioner corporation of stoppage of special pay was not a bona fide one and therefore, the learned Member of the Industrial Tribunal has rightly passed order on the interim application and the same should be allowed to

stand till final disposal of the reference. He submitted that in the event the petitioner corporation is successful in making out its case before the Industrial Tribunal, the Industrial Tribunal will take care of the interest of both the parties by passing suitable orders while finally disposing of the reference.

14. The learned advocate for the respondent-Mahamandal also invited attention of the Court to another affidavit in reply filed by same Shri Hasubhai Salvi dated 24th February 2004.

15. Having heard the learned advocates and having perused the record of the cases, the question which arises for consideration of this Court is as to whether interim order passed by the learned Member of the Industrial Tribunal below exh.8 should be allowed to operate till final disposal of the reference or the same is required to be interfered with by this Court.

16. Having taken into consideration the law laid down by the Hon'ble the Apex Court in the matter of Assistant Collector, Central Excise, Chandan Nagar, West Bengal (supra) and by the Division Bench of this Court in the matter of **Abhuji Karshaji Thakore** (supra) this Court is

of the opinion that the learned Member of the Industrial Tribunal could not have passed an order, resultant effect of which is grant of full and final relief at the admission stage itself.

In the result this petition succeeds. The order passed by the learned Member of the Industrial Tribunal in Reference (IT) No.123 of 2003 below exh.8 dated 4th December 2003 is hereby quashed and set aside. However, it is clarified that quashing of the interim order shall not weigh with the learned Member of the Industrial Tribunal at the time of deciding the reference finally. The learned Member of the Industrial Tribunal shall decide the reference independent of the fact that the order passed below exh.8 is quashed and set aside by this Court.

In the facts of the case it is deemed fit that the Industrial Tribunal be directed to give priority to hearing of the Reference (IT) NO.123 of 2003 and allied matters, and dispose them of finally. Order accordingly. Further thereto the Hon'ble Industrial Tribunal is directed to hear and decide the Reference (IT) No.123 of 2003 and allied matters as expeditiously as possible, preferably within six months from the date

of receipt of this judgement. Rule is made absolute with no order as to costs.

(RAVI R. TRIPATHI, J.)

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